OFFICE OF THE GENERAL COUNSEL Division of Operations-Management

MEMORANDUM OM 14-65

June 4, 2014

TO: All Regional Directors, Officers-in-Charge,

and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Revised Form NLRB-4668, Procedures in NLRB Unfair Labor Hearings

As part of a periodic review, a Committee reviewed suggestions from the Field and updated the Pleadings Manual. One of the suggestions the Pleadings Manual Committee received was to revise the complaint to include language telling parties to bring copies of their exhibits to trial. The Committee noted that although this instruction is covered in Form NLRB-4668, Procedures in NLRB Unfair Labor Hearings, which is sent out the same time as the complaint, the form failed to clearly communicate this and other important information. Therefore, with input from the Division of Judges, the Committee revised the form by organizing the information according to the stage of the trial, adding clear headings, using plain English, and encouraging e-filing. We believe the revised form will be more effective in communicating important information to the parties.

The NxGen template has been modified to incorporate the revised Form 4668 and the Forms library has been updated with the revised form. Please begin using the revised form immediately and discontinue use of the older form which was last revised in April 2005.

If you have any questions regarding this memorandum, please contact your AGC or Deputy or the undersigned.

/s/ A. P.

cc: NLRBU

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. You may be represented at this hearing by an attorney or other representative. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules and regs part 102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- <u>Special Needs</u>: If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- Pre-hearing Conference: One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

• <u>Witnesses and Evidence</u>: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- Transcripts: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- Oral Argument: You are entitled, on request, to a reasonable period of time at the close of the
 hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively,
 the ALJ may ask for oral argument if, at the close of the hearing, it is believed that such argument
 would be beneficial to the understanding of the contentions of the parties and the factual issues
 involved.
- <u>Date for Filing Post-Hearing Brief</u>: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- Extension of Time for Filing Brief with the ALJ: If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- ALJ's Decision: In due course, the ALJ will prepare and file with the Board a decision in this
 matter. Upon receipt of this decision, the Board will enter an order transferring the case to the
 Board and specifying when exceptions are due to the ALJ's decision. The Board will serve
 copies of that order and the ALJ's decision on all parties.
- Exceptions to the ALJ's Decision: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.